

Federal Communications Commission

DA 02-204

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Butler and Reynolds, Georgia)¹)
)
)
)
)
)MM Docket No. 01-5
RM-10028
RM-10107REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 16, 2002

Released: January 25, 2002

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is the Notice of Proposed Rule Making herein, 16 FCC Rcd 736 (2000), issued in response to a petition filed by H. David Hedrick ("Hedrick") proposing the allotment of Channel 245A to Butler, Georgia, as that community's first local aural transmission service.² Petitioner filed late comments.³ Supporting comments were filed by BK Radio.⁴ Comments and a counterproposal were filed on behalf of Fort Valley State University ("FVSU").⁵ Hedrick and FVSU each filed responsive comments.

2. Hedrick's comments were filed with the Commission two days after the initial comment

¹ The community of Reynolds, Georgia, has been added to the caption.

² Although Hedrick signed the petition for rule making and provided his address, he did not provide a verification statement and was requested to correct the deficiency in responsive comments to the Notice. Pursuant to Section 1.52 of the Commission's Rules, all petitions and pleadings filed by parties not represented by legal counsel must, in addition to providing a signature and address, submit a statement attesting that the information included in the filing is correct and true to the best of its knowledge. The verification requirement can be met by a declaration made before any officer authorized by law to administer oaths. Alternatively, pursuant to Section 1.16 of the Commission's Rules, unsworn verifications or declarations can be accepted in lieu of sworn affidavits or declarations if they are substantially in the following form: "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

³ See para. 2, *infra*.

⁴ BK's comments were signed by a partner and an address was provided. However, no verification statement was supplied. Therefore, as BK did not comply with the verification requirements of either Section 1.52 or 1.16 of the Commission's Rules, its comments are unacceptable.

⁵ Public Notice of the counterproposal was given May 10, 2001 (Report No. 2482).

deadline. It is the responsibility of the party submitting comments to ensure that documents are delivered to the Commission on time. See Gosnell and Osceola, Arkansas; Germantown and Ripley, Tennessee, 4 FC Rcd 6170 (1989). Moreover, in view of the filing of a valid counterproposal herein, as discussed *infra*, we cannot consider Hedrick's untimely expression of interest in the face of the conflicting proposal. See Santa Isabel, Puerto Rico and Christiansted, Virgin Islands, 3 FCC Rcd 2336 (1988), *aff'd*, 4 FCC Rcd 3412 (1989); *aff'd, sub nom. Amor Family Broadcasting v. FCC*, 918 F 2d. 960 (D.C. Cir. 1990). Therefore, having determined that the initial comments of Hedrick and BK are deficient, leaving no acceptable expression of interest in the proposed allotment of Channel 245A at Butler, we will not consider Hedrick's reply comments setting forth a comparative evaluation of the two communities, and FVSU's response thereto. Since a comparative analysis between Butler and Reynolds, Georgia, is not required, we will proceed to consider the merits of FVSU's proposal.

3. FVSU seeks the allotment of Channel 245A to Reynolds, Georgia (pop. 1,166),⁶ an incorporated community, as its first local service, reserved for educational use. In support of its proposal FVSU reports that Fort Valley State University ("University") is located in Fort Valley, Georgia, a community approximately 12 miles east of Reynolds. FVSU advises that the University serves approximately 2,600 students. Further, FVSU advises that its earlier attempts to establish a noncommercial educational (NCE) station to serve the area around Fort Valley, and provide a teaching aid to its broadcast students, have been unsuccessful. In this regard, FVSU asserts that a minor change application filed by a NCE FM station in a nearby community precluded FVSU from filing an application for a new NCE station in the reserved band. Additionally, FVSU reports that while the University's Broadcasting Club filed an application for a low power FM station,⁷ recent changes in the law by the U.S. Congress will result in the rejection of that application. FVSU provided a technical engineering statement reflecting the unavailability of any channel in its community of interest in the NCE FM band (Channels 201 to 220). Under the circumstances, FVSU comments that its request is consistent with the Reexamination of the Comparative Standards of Noncommercial Educational Applicants ("NCE Applicants"), 15 FCC Rcd 7356 (2000), *recon. granted in part and denied in part*, 16 FCC Rcd 5074 (2001). FVSU further reports that although Channel *245A cannot be allotted to Fort Valley, it can be used at Reynolds, and the main studio of the new station could be located on the University's campus. Moreover, FVSU advises that the requested allotment of Channel *245A at Reynolds could provide a second NCE FM service to 5,336 persons, representing 13.75% of the total population of 38,802 persons within the proposed 60 dBu (1 mV/m) service contour. Further, FVSU states that a station allotted at Reynolds would serve not only its residents, but surrounding communities as well, including Fort Valley and Butler, Georgia. FVSU urges that its efforts in this proceeding is the final opportunity for it to operate a NCE FM station, and that

⁶ Population figure was taken from 1990 U.S. Census data.

⁷ See File No. BNPL-20000605AES.

such action would serve the public interest by enabling the University to fulfill its obligation by providing the needed radio service and aid in the education of its students.

4. A staff engineering review of FVSU's proposal has determined that there are no channels available in the reserved educational band to accommodate FVSU's request. The allotment of Channel *245A at Reynolds, Georgia, will provide a first local service to that community. Additionally, we have determined that the allotment of Channel *245A at Reynolds could provide a second NCE service to 7,052 persons, representing 18.8% of the total population within the proposed 60 dBu service contour, and therefore, is consistent with the Commission's policy set forth in NCE Applicants, supra. Channel *245A can be allotted to Reynolds consistent with the technical requirements of the Commission's Rules provided the transmitter site is located at least 4.4 kilometers (2.8 miles) southwest of the community, utilizing coordinates 32-31-32 NL and 84-07-15 WL.

5. In consideration of the above, we are allotting Channel *245A to Reynolds, Georgia, and reserving the allotment for NCE use, as requested.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 11, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include Reynolds, Georgia, as follows:

City

Channel No.

Reynolds, Georgia*245A

7. IT IS FURTHER ORDERED, That the petition for rule making filed by H. David Hedrick (RM-10028) IS DENIED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. A filing window for Channel *245A at Reynolds, Georgia, will not be opened at this time. Instead, the issue of opening this allotment for application will be addressed by the Commission in a subsequent Order.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel *245A at Reynolds, Georgia, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**